This certification can be made because the proposed regulatory amendments only affect the eligibility of certain veterans with service-connected disabilities for benefits and assistance under the vocational rehabilitation program. The proposed regulatory amendments will have no significant economic impact on small entities, i.e., small business, small private and nonprofit organizations and small governmental jurisdictions.

(The Catalog of Federal Domestic Assistance number for the program affeted by these proposed regulatory amendments is 64.116)

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 13, 1989.

**Edward J. Derwinski,**

*Secretary of Veterans Affairs.*

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows:

1. In § 21.32, paragraph (b) and the cross-references at the end of the section are revised and paragraph (c) is added to read as follows:

**§ 21.32 Time limit.**

* * * * *

(b) *Failure to furnish claim or notice of time limit.* The failure of VA to furnish a claimant:

(1) Any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim is not a basis for adjusting the periods allowed for these actions;

(2) Appropriate notice of time limits within which evidence must be submitted to perfect a claim shall result in an adjustment of the period during which the time limit runs. The period during which the time limit runs shall be determined in accordance with paragraph (c) of this section. As to appeals see § 19.129 of this chapter.

(Authority: (38 U.S.C. 3013)

(c) *Adjustment of time limit.* (1) In computing the time limit for any action required of a claimant or beneficiary to perfect the types of claims described in paragraph (a) of this section, the first day of the specified period will be excluded and the last day included. This rule is applicable in cases in which the time limit expires on a workday. Where the time limit would expire on a Saturday, Sunday, or holiday, the next succeeding workday will be included in the computation.

(2) The period during which the veteran must provide information necessary to perfect his or her claim does not begin to run until the veteran has been notified of this requirement for submission of information. The date of the letter of notification informing the veteran of the action required and the time limit for accomplishing the action shall be "The first day of the specified period" referred to in paragraph (c)(1) of this section.

(Authority: U.S.C. 3001, 3013, 201(c))

**Cross-Reference:** Due Process. See § 3.103.

2. In § 21.322, paragraph (c)(1)(i)(B), (ii)(B), (iii), (2)(i)(B) and (C) are revised to read as follows:

**§ 21.322 commencing dates of subsistence allowance.**

* * * * *

(c) *Increases for dependents—*

(1) * * *

(i) * * *

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(ii) * * *

(B) VA receives any necessary evidence within 1 year of the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part;

(iii) The effective date of the increase will be the date VA receives all necessary evidence if that evidence is received more than one year from the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(2) * * *

(i) * * *

(B) Date notice is received of the dependent's existence if evidence is received within 1 year from the date VA requested the evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of these time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

(C) Date VA receives evidence of the dependent's existence if this date is more than 1 year after VA requested this evidence and informed the veteran of the time limits during which this evidence must be submitted. If VA fails to inform the veteran of the time limits, the period for submission of the evidence is adjusted in accordance with § 21.32 of this part.

* * * * *

[FR Doc. 89-23247 Filed 10-2-89; 8:45 am]

BILLING CODE 8320-01-M

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**38 CFR Part 21**

**RIN 2900-AD77**

## Disabling Effects of Chronic Alcoholism

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed regulation.

**SUMMARY:** The Veterans' Benefits and Improvement Act of 1988 provides that the disabling effects of chronic alcoholism shall not be considered to be the result of the veteran's willful misconduct for the purpose of extending a delimiting date under any education benefit or rehabilitation program administered by the Department of Veterans Affairs (VA). The intended effect of this proposed rule is to implement this provision of the statute with respect to the vocational rehabilitation program.

**DATES:** Comments must be received on or before November 2, 1989. Comments will be available for public inspection until November 13, 1989. The proposed effective date of the proposed regulation, like the effective date of the law which it interprets, is November 18, 1988.

**ADDRESSES:** Interested persons are invited to submit written comments, suggestions, or objections to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection at the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233-6496.

**SUPPLEMENTARY INFORMATION:** The Veterans' Benefits and Improvement Act

of 1988, Public Law 100–689, provides that the disabling effects of chronic alcoholism shall not be considered the result of the veteran's willful misconduct for the purpose of extending a delimiting date under any educational assistance or rehabilitation program administered by VA. In order to include this provision of section 109, Public Law 100–689, in rules governing the vocational rehabilitation program an amendment is made to § 21.42(c). Under § 21.42(c) the basic 12-year period of eligiblity does not run during any period of 30 days or more during which the veteran was unable to participate in a vocational rehabilitation program because of his or her medical condition. Section 21.42(c) is amended to specifically include chronic alcoholism as a condition for which the basic 12-year eligibility period for vocational rehabilitation may be adjusted. The proposed regulation also defines what VA considers as the disabling effects of chronic alcoholism for the purpose of adjusting the basic 12-year period of eligibility. This proposed regulation will have no effect on provisions of the regulations relating to the compensation and pension program.

VA has determined that this proposed regulation does not contain a major rule as that term is defined in Executive Order 12291, Federal Regulation. The proposal will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

It is proposed to make this amendment retroactively effective. This is an intepretative rule which implements statutory provisions. Moreover, VA finds good cause exists for making this rule, like the section of the law which it implements, retroactively effective to the date of enactment. A delayed effective date would be contrary to statutory design; would complicate implementation of this provision of law; and might result in a denial of a benefit to a veteran who is entitled by law to that benefit.

The Secretary certifies that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), this proposed rule is therefore exempt from the initial and final flexibility analyses requirements of §§ 603 and 604. The reasons for this certification are that this proposed regulation only affects the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by this regulation.

(The Catalog of Federal Domestic Assistance number is 64.116)

**List of Subjects in 38 CFR Part 21**

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 8, 1989.

**Edward J. Derwinski,**

*Secretary of Veterans Affairs.*

38 CFR part 21, Vocational Rehabilitation and Education, is proposed to be amended by revising paragraph (c) of § 21.42 to read as follows:

**§ 21.42 Basic period of eligibility deferred.**

* * * * *

(c) *Medical condition prevents initiation or continuation.* (1) The basic 12-year period of eligibility shall not begin to run or continue to run during any period of 30 days or more in which the veteran's participation in vocational rehabilitation is infeasible because of the veteran's medical condition, which condition may include the disabling effects of chronic alcoholism, subject to paragraph (c)(5) of this section. The 12-year period shall begin or resume when it is feasible for the veteran to participate in a vocational rehabilitation program, as that term is defined in § 21.35 of this part.

(2) The term "disabling effects of chronic alcoholism" means alcohol-induced physical or mental disorders or both, such as habitual intoxication, withdrawal, delirium, amnesia, dementia, and other like manifestations of chronic alcoholism which, in the particular case:

(i) Have been medically diagnosed as manifestations of alcohol dependency or chronic alcohol abuse; and

(ii) Are determined to have prevented commencement or completion of the affected individual's rehabilitation program.

(3) A diagnosis of alcoholism, chronic alcoholism, alcohol dependency, chronic alcohol abuse, etc., in and of itself, does not satisfy the definition of "chronic alcoholism."

(4) Injury sustained by a veteran as a proximate and immediate result of activity undertaken by the veteran while physically or mentally unqualified to do so due to alcoholic intoxication is not considered a disabling effect of chronic alcoholism.

(5) The disabling effects of chronic alcoholism, which prevent initiation or continuation of participation in a vocational rehabilitation program after November 17, 1988, shall not be considered to be the result of willful misconduct.

(Authority: 38 U.S.C. 1503(b)(1), Pub. L. 100–689)

[FR Doc. 89–23248 Filed 10–2–89; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FRL–3654–5]**

### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Extension of Public Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Extension of public comment period.

**SUMMARY:** On August 14, 1989 (54 FR 33245), EPA proposed approval of a revision submitted by the Commonwealth of Massachusetts for the Acushnet Company, Plant A. On September 12, 1989, Acushnet Company requested an extension of the public comment period. EPA has evaluated this request and is hereby granting a thirty (30) day extension of the public comment period.

**DATES:** Comments should be received on or before October 13, 1989.

**FOR FURTHER INFORMATION CONTACT:** Cynthia L. Greene; (617) 565–3244; FTS 835–3244.

Authority: 42 U.S.C. 7401–7642.

Dated: September 20, 1989.

**Paul Keough,**

*Acting Regional Administrator, Region I.*

[FR Doc. 89–23299 Filed 10–2–89; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 531

**[Docket No. LVM 89–01; Notice 2]**

### Passenger Automobile Average Fuel Economy Standards; Proposed Exemptions and Alternative Standards

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Proposed decision to grant exemptions from average fuel economy

standards and to establish alternative standards.

**SUMMARY:** This consolidated notice responds to individual petitions filed by three low volume manufacturers, Lamborghini, LondonCoach, and Maserati, each requesting exemption from the generally applicable passenger automobile average fuel economy standards, and seeking establishment of lower alternative standards for each model year (MY) from which they seek exemption. This notice proposes to grant exemptions and establish alternative standards as follows:

Lamborghini of North America (Lamborghini) petitioned to be exempted for MYs 1983 and 1984. This notice proposes to exempt Lamborghini and establish an alternative standard of 13.7 mpg for MYs 1983 and 1984.

London Coach Co., Inc. (LondonCoach) petitioned to be exempted for MYs 1985 through 1987. This notice proposes to exempt LondonCoach and to establish an alternative standard of 21.0 mpg for MYs 1985 through 1987.

Officine Alfieri Maserati S.p.A. (Maserati) petitioned to be exempted for MYs 1982–1985. In a separate notice published today, the agency denies Maserati's request for MYs 1982 through 1983 because the Maserati petition was not timely filed for those years and good cause was not shown for the late filing. This notice proposes to exempt Maserati for MYs 1984 and 1985, and to establish alternative standards of 17.3 mpg for MY 1984 and 16.6 mpg for MY 1985.

**DATES:** Comments on the proposals in this notice must be received by NHTSA on or before November 17, 1989.

**ADDRESS:** Comments on this notice must refer to Docket No. LVM 89–01; Notice 2 and should be submitted to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 8:00 a.m. to 4:00 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Mr Orron Kee, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Mr. Kee's telephone number is (202) 366–0846.

**SUPPLEMENTARY INFORMATION:**

## Background

Title V of the Motor Vehicle Information and Cost Savings Act (Cost Savings Act), which is codified at 15 U.S.C. 2001–2002, provides for an automotive fuel economy regulatory program under which standards are established for the corporate average fuel economy (CAFE) of the annual production fleets of passenger automobiles and light trucks. Title V was added in 1975 to the Cost Savings Act by the Energy Policy and Conservation Act (EPCA). Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA.

Section 502 specified CAFE standards for passenger automobiles of 18, 19, and 20 mpg for MYs 1978, 1979, and 1980, respectively, and 27.5 mpg for model year 1985 and thereafter. The Secretary of Transportation was required to establish standards for MYs 1981 through 1984 by July 1, 1977. Section 502(a)(3) requires that the standards for each of those model years be set at a level which (1) is the maximum feasible average fuel economy level and (2) would result in steady progress toward meeting the standard for MY 1985. On June 30, 1977, NHTSA adopted CAFE standards for passenger automobiles for MYs 1981 through 1984 (42 FR 33534). These standards were 22 mpg for 1981, 24 mpg for 1982, 26 mpg for 1983, and 27 mpg for 1984.

Title V provides that NHTSA has broad discretion to decide whether to amend the standards. If NHTSA decides to amend the standards for MY 1985 and thereafter, however, the agency is required to comply with the Administrative Procedure Act (APA) (5 U.S.C 501 *et seq.*) and to set the amended standards at the "maximum feasible" level of average fuel economy. Pursuant to that authority, the agency reduced the MY 1986–88 standards to 26 mpg.

Section 502(c) of the Cost Savings Act provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactures (worldwide) fewer than 10,000 passenger automobiles in the model year for which the exemption is sought (the affected model year) and that manufactured fewer than 10,000 passenger automobiles in the second model year before the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;

(2) Economic practicability;

(3) The effect of other Federal motor vehicle standards on fuel economy; and

(4) The need of the Nation to conserve energy.

### *Selection of the Type of Alternative Standard*

The Act permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) A separate standard may be established for each exempted manufacturer; (2) classes, based on design, size, price, or other factors, may be established for the automobiles of exempted manufacturers, with a separate average fuel economy standard applicable to each class; or (3) a single standard may be established for all exempted manufacturers.

If exemptions are granted to the petitioners for the model years covered by their petitions, NHTSA believes it is appropriate to establish separate standards for each manufacturer because the agency has already used that approach for other low volume manufacturers that petitioned for exemptions during MYs 1978–1989. NHTSA has reached final decisions on several exemption petitions filed by low volume manufacturers for the 1978 through 1989 model years; Avanti Motor Corporation for MYs 1978 through 1985 (49 CFR 531.5(b)(1)), Rolls-Royce Motors, Inc. for MYs 1978 through 1989 (49 CFR 531.5(b)(2)), Checker Motors Corporation for MYs 1978 through 1982 (49 CFR 531.5(b)(3)), Aston Martin Lagonda, Inc. for MYs 1979 through 1985 (49 CFR 531.5(b)(4)), and Excalibur Automobile Corporation for MYs 1978 through 1985 (49 CFR 531.5(b)(5)).

### *Timing of Petitions*

Title 49 CFR part 525 sets forth the required contents of and procedures for processing petitions for exemption from the generally applicable passenger automobile average fuel economy standards. 49 CFR 525.6(b) specifies that each petition for exemption must be filed "not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown; * * *." The reasons for including this deadline in § 525.6 were to facilitate the low volume manufacturers' planning to comply with the alternative standards, and to ensure that the agency's analysis of those manufacturers' maximum feasible average fuel economy would not be simply a "rubber stamping" of the individual manufacturer's planned fuel economy, caused by insufficient leadtime for the manufacturer to make changes. *See* 41 FR 53827, 53828; December 9, 1976.

However, the agency recognized that there would be situations when good cause existed for not filing 24 months before the start of the model year. NHTSA has recognized two situations as establishing good cause for failure to submit a timely petition. First, there are situations in which the necessary supporting data for the petition were unavailable until after the due date had passed. For example, a recently incorporated manufacturer might not have adequate time to file an exemption petition 24 months prior to the model year. Second, there are situations in which a legitimately unexpected noncompliance occurs. An example is if a company providing a low volume manufacturer with its engines goes out of business, and the manufacturer is forced to make an unanticipated engine switch, resulting in lower than expected fuel economy. *See* 44 FR 21051 at 21055, April 9, 1979.

*Timing of Exemptions*

The agency has stated on several occasions that it interprets section 502 as providing the agency broad discretion to decide whether an amendment of an average fuel economy standard is warranted. (53 FR 15241, at 15243, April 28, 1988; 53 FR 39115, at 39116, October 5, 1988) In the absence of explicit guidance in title V on the exercise of its discretion, NHTSA has looked to the statutory scheme as a whole and the Administrative Procedure Act (APA) to determine whether it should or could amend a CAFE standard for a bygone year. The agency has concluded that for passenger automobiles produced by other than low volume manufacturers, such retroactive amendment is inconsistent with several aspects of the statutory scheme. (53 FR 15241, April 28, 1988)

A recent Supreme Court decision, *Bowen* v. *Georgetown University Hospital*, 109 S.Ct. 468 (1988), confirms that an agency's ability to adopt retroactive rules is very limited. In delivering the opinion of the Court, Justice Kennedy stated that "a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in express terms." 109 S.Ct. at 471.

While this decision provides additional support for NHTSA's determination that it would be inappropriate (if not illegal) to retroactively amend the industry-wide CAFE standards, there are compelling reasons to distinguish low volume exemptions from the general principle that retroactive rulemaking is prohibited.

As an initial matter, while it is true that section 502(c) of the Cost Savings Act provides that the Secretary may grant low volume exemptions "by rule," in fact, the agency's consideration of an application for such an exemption has more of the characteristics of a case-by-case adjudication. In this regard, although the Supreme Court concluded in *Georgetown University Hospital* that the Medicare Act, 42 U.S.C. 1395 *et seq.*, does not provide authorization to retroactively adopt the cost-limit rules at issue in that case, the Court recognized that "case-by case inquiry into the accuracy of reimbursement determinations for individual providers" was authorized. *Id.* at 472.

Moreover, although Justice Scalia's concurrence expresses an extremely limited view of an agency's authority to issue retroactive rules, his opinion recognizes that "implicit authorization of particular retroactive rulemaking can be found in existing legislation." 109 S.Ct. at 480. As an example, Justice Scalia referred to a situation in which an agency misses a statutory deadline. Here, the agency's failure to act upon timely applications for low volume exemptions from the industry-wide CAFE standards would appear to fall within the exception noted by Justice Scalia, particularly since the manufacturers were in no way responsible for the agency's inaction.

Similarly, this case seems to fit within the principle established by *Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U.S. 607 (1944). As Justice Scalia recognized, *Addison* stands for the proposition that retroactive rulemaking is implicitly authorized where "the Administrator would, by his inaction, have totally eliminated the congressionally prescribed * * * exemption." 109 S.Ct. at 479. If NHTSA could not issue exemptions from the industry-wide CAFE standards for low volume manufacturers after the commencement of a model year, the agency also would, by inaction, have "totally eliminated the congressionally prescribed" low volume manufacturer exemption for the manufacturers and years in question.

These manufacturers filed timely applications for low volume exemptions because they recognized that they could not meet the generally applicable CAFE standards. If the Act were read to preclude NHTSA from acting upon those timely applications at this time, those manufacturers would be unfairly penalized by agency inaction that was beyond their control. In order to avoid such a result, the Motor Vehicle Information and Cost Savings Act must be construed to implicitly authorize the grant of retroactive low volume exemptions under these circumstances.

**Agency Response to Petitions**

*Methodology Used to Project Maximum Feasible Average Fuel Economy Level for Petitioners*

In this particular proceeding, NHTSA is not conducting rulemaking in advance of the model years for which the fuel economy standards are applicable. The vehicles which are the subject of this rulemaking have already been produced and tested by the Environmental Protection Agency (EPA). To determine the fuel economy benefits of the technology incorporated on these vehicles, NHTSA relied on the EPA test figures to establish the fuel economy level actually achieved by the petitioners. (45 FR 84108, December 22, 1980; 47 FR 20639, May 13, 1982) NHTSA then considered whether there were any technological or other improvements that would have been technologically feasible and economically practicable for the petitioners' cars, but were not incorporated on those cars.

NHTSA has interpreted "technological feasibility" as meaning that technology which was available for use in automobiles in a given model year and which would have improved the fuel economy for those automobiles. (42 FR 33533, June 30, 1977) The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, reduced rolling resistance, and mix shifts.

The agency considered two methods of weight reduction: downsizing and materials substitution. The goal of downsizing is to reduce the exterior dimensions and mass of the car without significantly reducing the interior passenger and luggage volume of the car. Materials substitution refers to the substitution of lighter materials, such as aluminum, plastics, and high strength low alloy steels, for currently used materials.

Mix shifts refers to shifting the percentage of vehicles sold in each of a manufacturer's model types for the purpose of increasing the manufacturer's average fuel economy. That is, the manufacturer can try to switch customers from its less fuel-efficient models to its more fuel-efficient models without reducing its total sales.

"Economic practicability" has been interpreted as meaning the financial capability of a manufacturer to improve

its average fuel economy by incorporating technologically feasible changes in its automobiles. (42 FR 33533 June 30, 1977)

**Lamborghini**

*Background Information on Lamborghini*

Lamborghini is a very small manufacturer of high performance sports cars. Lamborghini itself manufactures the engines, transmissions, and many other components used in its vehicles.

The company underwent a reorganization in bankruptcy during 1978 and 1979. It produced no more than 75 cars for worldwide sales in any model year between 1979 and 1982 and did not export any cars to the United States during MYs 1978 through 1982. Lamborghini sold 7 cars in the United States during MY 1983 and 9 during MY 1984. Lamborghini's total production in 1983 was 178 vehicles, and in 1984 it was 231. By letter dated December 15, 1980, Lamborghini filed a petition for exemption for MY 1983. On November 17, 1981, this petition was amended to include MY 1984.

*Methodology used to project maximum feasible average fuel economy level for Lamborghini*

The cars sold by Lamborghini in MYs 1983 and 1984 were all one vehicle configuration, the Countach, with a fuel economy of 13.7 mpg. This figure was used as a baseline and any changes found technologically feasible and economically practicable were added thereto to arrive at a proposed determination of Lamborghini's maximum feasible average fuel ecconomy for MYs 1983 and 1984. Throughout this analysis, NHTSA has considered only those improvements which would be compatible with the basic design concepts of Lamborghini automobiles. Lamborghini automobiles have traditionally been high performance sports cars with luxury features in the interior. Design changes which would significantly reduce the cars' performance or eliminate items traditionally offered on these types of vehicles, such as air conditioning, were not examined in consideration of the economic practicability criterion. Such changes to the basic design might well significantly reduce the demand for these cars, thereby reducing sales and causing a serious economic injury to the low volume manufacturer.

*Weight reduction*

In determining whether Lamborghini could have made weight reductions on its 1983 and 1984 cars, the agency considered two options: downsizing and materials substitution. The Lamborghini is already a very short two seater automobile with relatively small exterior dimensions. Accordingly, NHTSA has tentatively concluded that downsizing would not have been economically practicable for 1983 and 1984 Lamborghini cars.

The other primary means of weight reduction is materials substitution. Taking this step would have required a change of suppliers and some vehicle design by Lamborghini. Again, considering the company's economic position at the time it manufactured its MY 1983 and 1984 cars, NHTSA has tentatively concluded that weight reduction by materials substitution would not have been economically practicable for Lamborghini in those model years.

*Aerodynamic Improvements*

The 1983 and 1984 Lamborghini automobiles had a relatively small frontal area, which gives less wind resistance and greater fuel economy than a larger frontal area. Generally speaking, Lamborghini and those vehicles it considers as its competition have already been designed with much attention to the aerodynamics of the vehicles. Consequently, for these Lamborghini cars to have shown fuel economy gains as a result of aerodynamic improvements, a complete redesign of the vehicles would have been necessary. After considering the financial position of the company at the time, NHTSA has tentatively concluded that fuel economy improvements as a result of improved aerodynamics would not have been economically practicable for the MY 1983 and 1984 Lamborghini cars.

*Engine improvements*

NHTSA also considered whether Lamborghini could have improved the fuel economy of its MY 1983 and 1984 cars by either reducing the engine displacement or by using an alternative engine. The engine used in those vehicles had a displacement of 4754 cubic centimeters, or roughly 290 cubic inches. The company stated that a reduction in the size of its engines would result in its vehicles not offering comparable performance to that of its competitors, thereby reducing sales of Lamborghini cars.

Additionally, Lamborghini designs and builds its own engines. Thus, a reduction in the size of the engine would have required extensive design and testing of a smaller engine at a time when the company was coming out of a major financial reorganization. For both these reasons, NHTSA nas tentatively concluded that a reduction of engine size would not have been economically practicable for MY 1983 and 1984 Lamborghini cars.

NHTSA believes the only opportunity for engine improvements would have been to increase the efficiency of the existing engine. In order to judge the feasibility of such action, NHTSA compared the fuel economy of the Lamborghini to cars of similar market intent. The fuel economy of the Lamborghini was compared to the Ferrari 308, the Lotus Turbo Esprit, and other similar vehicles. After "normalizing" for characteristics important to fuel efficiency, the Lamborghini's fuel economy was 3.9–5.0 mpg higher than the Ferrari and Lotus, and 0.4–1.2 mpg below that of high-volume models such as the Chevrolet Corvette, Porsche 928, and Alfa Romeo GTV6. Thus, the agency has tentatively concluded there is little opportunity to improve the fuel efficiency of the existing engine without sacrificing the performance necessary in Lamborghini's segment of the market.

*Drive Line Improvements*

The primary drive line improvements to enhance achievable fuel economy are transmission improvements and the use of a lower axle ratio. Lamborghini already uses a manual five-speed transmission, with the fifth gear functioning as an overdrive. This is the most fuel-efficient type of transmission currently available. Accordingly, NHTSA tentatively concludes that it would not have been technologically feasible for Lamborghini to have improved its 1983 and 1984 fuel economy by means of transmission improvements.

The 1983 and 1984 Lamborghini cars used a 4 09 axle ratio. While this is a relatively high axle ratio, the company stated in its petition that any significant reduction in the axle ratio would considerably worsen the cars, drivability, and hurt sales. In addition, acceleration performance necessary to compete in this segment of the market would suffer. Thus, NHTSA has tentatively concluded that it would not have been economically practicable to change the axle ratio.

*Mix Shifts*

Since Lamborghini sold only one vehicle configuration in the 1983 and 1984 model years, no fuel economy improvement could have been achieved by means of mix shifts.

*Impacts of Other Federal Standards*

Lamborghini claimed that its MY 1983 and 1984 models which complied with U.S. vehicle standards showed fuel economy values 5 to 10 percent lower than for those same models wnich did not comply with U.S. standards. However, the agency has already accounted for that fuel economy difference by using EPA's fuel economy figures for the U.S. standard vehicles as the baseline in its analysis. Those figures reflect whatever impact compliance with the U.S. vehicle standards has on the fuel economy of those vehicles. Therefore, for the purposes of the Lamborghini petition for the 1983 and 1984 model years, NHTSA has tentatively assumed that there is no unaccounted-for negative impact on fuel economy caused by applicable Federal standards.

*The Need of the Nation to Conserve Energy*

The agency recognizes there is a need to conserve energy to promote energy security and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it would not have been technologically feasible or economically practicable for Lamborghini to achieve an average fuel economy above a level of 13.7 mpg in the 1983 and 1984 model years. Denying an exemption to Lamborghini or setting higher alternative standards than the 13.7 mpg level in both affected model years would not, therefore, have resulted then and would not result now in any additional fuel consumption or in any effect on the need of the Nation to conserve energy.

*Proposed Alternative Standards*

This agency has tentatively concluded that it would not have been technologically feasible or economically practicable for Lamborghini to have improved the fuel economy of its 1983 and 1984 model year cars above an average of 13.7 mpg, that compliance with other Federal automobile standards did not adversely affect achievable fuel economy, and that the national effort to conserve energy would not then have been and would not now be affected by granting the requested exemptions and establishing alternative standards. Consequently, this agency tentatively concludes that the maximum feasible average fuel economy for Lamborghini was 13.7 mpg in the 1983 model year and 13.7 mpg in the 1984 model year. Therefore, NHTSA proposes to exempt Lamborghini from the generally applicable standards of 26.0 mpg and 27.0 mpg for MYs 1983 and 1984, respectively, and to establish alternative standards of 13.7 mpg for Lamborghini for both years.

**LondonCoach**

*Background Information About LondonCoach*

On September 6, 1985, LondonCoach Co., Inc. petitioned the agency for alternative standards for MYs 1985–1987 for a taxicab known as the "London Taxi" and a limousine known as the "London Sterling." LondonCoach was organized in May 1984 for the purpose of manufacturing and selling vehicles for hire, namely taxicabs and limousines. The body and chassis of the vehicles are purchased from Carbodies Limited of Coventry, England. U.S. built Ford engines and transmissions are installed by LondonCoach. LondonCoach produced 75 vehicles for combined MYs 1985 and 1986, and estimated production to be 75 vehicles for MY 1987. Prior to 1985, LondonCoach did not manufacture or sell any vehicles in the United States. The fuel economy value for these vehicles is 21.0 mpg. Accordingly, LondonCoach qualifies as a "low volume manufacturer" and seeks an exemption from the CAFE standards for MYs 1985 through 1987.

*Timeliness of LondonCoach's Petition*

LondonCoach was unable to file 24 months before the start of MY 1985 because the corporation was not organized until May 1984. LondonCoach had no fuel economy data on which to base its petition until the conclusion of EPA testing. EPA testing of the vehicle was completed in August 1985. LondonCoach filed its petition for the 1985 through 1987 model years on September 6, 1985. Accordingly, pursuant to 49 CFR § 525.6(b), NHTSA has tentatively concluded that LondonCoach has shown good cause for late filing of its petition for the affected model years.

*Methodology Used to Project Maximum Feasible Average Fuel Economy Level for LondonCoach*

Based on an EPA test conducted on August 7, 1985, the combined city and highway fuel economy value for the LondonCoach vehicle was 21.04 mpg. The petitioner contemplated that the maximum feasible fuel economy level for model years 1985 through 1987 would be no less than 21.0 mpg. LondonCoach purchases the body and chassis from Carbodies Limited of Coventry England and installs U.S. Ford engines and transmissions. No immediate changes were contemplated by LondonCoach which would enhance the feasible fuel economy for these vehicles. Under the Act, this agency considered whether any technical or other improvements would have been feasible for the 1985 through 1987 model year LondonCoach vehicles, regardless of whether the company had any actual plans to incorporate any improvements.

Throughout this analysis, NHTSA has considered only those improvements which would have been compatible with the basic design concepts and intended uses of LondonCoach vehicles. NHTSA assumes that LondonCoach will continue to produce the taxicab and limousine versions of the automobiles. The automobile's intended purpose is as a vehicle for hire to provide passengers with an exceptionally large passenger compartment allowing easy accessibility to the vehicle.

LondonCoach expected its taxis to fill a void left by the 1982 termination of production by the Checker Cab Co. by providing the public with vehicles designed primarily for taxicab purposes. The petitioner also anticipated that the vehicles will be used by handicapped and elderly persons as an alternative mode of transportation that is more accommodating than conventional taxi vehicles. Hence, design changes which would have made the cars unsuitable for multiple passengers or removed features that are necessary to preserve the unique characteristics of the LondonCoach vehicles were not examined.

Further, these vehicles are designed to be operated up to 60,000 miles per year, have an average service life of 10 years, and to be extremely maneuverable on city streets. Therefore, these vehicles must remain highly durable. Any changes that would alter the basic uses of the vehicle, or which could significantly reduce the demand for these automobiles were not considered because of the economic hardship that would result to the low volume manufacturer.

*Baseline Fuel Economy*

The MY 1985 LondonCoach vehicles were measured by the EPA as achieving a CAFE of 21.0 mpg. No change to the vehicle's specifications were planned by the manufacturer for MY 1986 or MY 1987. Therefore, the 1985 fuel economy rating is valid for the MY 1986 and 1987 vehicles.

LondonCoach offers a single body style vehicle with two variations for the taxicab and the limousine. The two versions have an equivalent test weight of 3875 pounds and each achieves 21.0 mpg. Therefore, both the London Taxi and the London Sterling can be

considered to be identical for fuel economy purposes.

Accordingly, the fuel economy rating of 21.0 mpg was used as the baseline. The agency has considered whether any possible changes would be technologically feasible and economically practicable in order to determine LondonCoach's maximum feasible average fuel economy for MYs 1985 through 1987.

*Weight Reduction*

A reduction in the size of the vehicle would not be feasible since LondonCoach purchases the body and chassis structure of the automobile as an assembly from Carbodies. This arrangement allows little opportunity for significant weight reductions in the body and chassis of the vehicle. Further, LondonCoach intends to offer the public the use of distinctive London taxis on streets in the United States. A smaller version of the London taxi would alter the intended market and demand for the vehicles.

LondonCoach intended to produce a vehicle specifically designed with a large passenger compartment allowing easy entrance and exit from the vehicle, as well as providing a large luggage compartment. LondonCoach vehicles have a combined EPA passenger and cargo volume that is greater than any U.S. passenger automobile except Ford and General Motors large station wagons. The passenger volume alone is greater than any automobile offered for sale in the U.S.

The Checker Cab, which was also designed for taxicab service, had a passenger volume of 100 cubic feet and CAFE of 19.1 mpg in its final year of production, model year 1981. LondonCoach's passenger volume is 144 cubic feet with its average fuel economy of 21.0 mpg. The agency determined that the fuel consumption per cubic foot of passenger volume for the LondonCoach automobiles is between 16 and 43% more efficient when compared with other vehicles used for taxicab service. These other taxi vehicles achieve either equivalent or only slightly better fuel economies than the LondonCoach vehicle. Therefore, LondonCoach vehicles achieve fuel economy comparable to that of other vehicles that are typically used for taxicab services.

The other primary means to achieve weight reduction is by materials substitution The petitioner is not in a position to change the materials used in constructing the body and chassis of the vehicle because it purchases the assembled body and chassis from Carbodies. It would not be economically practicable for Carbodies to retool its facilities to produce a vehicle using lighter materials because LondonCoach buys such a small number of vehicles from Carbodies. The exact percentage of Carbodies' taxi body and chassis production that was purchased by LondonCoach is not known.

The LondonCoach automobiles are constructed from steel. Although the use of aluminum could produce significantly lighter automobiles, this could reduce the durability of the cars. The need to provide a durable, long-life structure for taxi service militates against weight reduction in this manner. The materials currently used by Carbodies have a proven record of durability, safety, and structural integrity with its 29 year history in the United Kingdom.

In an effort to comply with the average fuel economy standards, the petitioner has selected a Ford Motor Co. 2.3 liter engine which is approximately 350 pounds lighter and considerably more efficient than the engine used in the vehicle manufactured by Carbodies and sold in the United Kingdom. The use of the Ford engine and automatic transmission yields a weight reduction of approximately 8% of the total weight of the vehicle. The petitioner stated that the engine and transmission that it selected are the lightest available that comply with EPA emission standards. The agency has determined that this is among the smallest engines that could be used in such a heavy automobile.

Given the limited resources of the petitioner as a low volume manufacturer and the substantial expense and engineering effort required to redesign in order to downsize or substitute materials while remaining in compliance with other Federal Motor Vehicle Safety Standards (FMVSS), NHTSA has tentatively concluded that further weight reduction would not have been economically practicable for LondonCoach MY 1985–1987 vehicles.

*Aerodynamic Improvements*

Since LondonCoach has an arrangement with Carbodies to purchase the body and chassis, it would not be feasible for LondonCoach to make any immediate aerodynamic design improvements to increase fuel economy. In addition, LondonCoach intended to market the distinctive London taxis for use in the United States. These automobiles are recognized in the United States as being the large London taxis. The large frontal area, boxy proportions and unique shape of the vehicles give rise to the recognition and the market for these cars. While these features may not be aerodynamically efficient, they are necessary to meet the intended demand for this specific vehicle.

Alterations in the shape of the vehicle for aerodynamic improvements could result in a decrease of the passenger or luggage areas, or alter recognition of the automobile as a London taxi. These changes would significantly reduce LondonCoach's intended market and cause economic harm to the low volume manufacturer. Significant improvements in aerodynamics would require major alterations requiring substantial development, testing and leadtime in addition to the expense. Additionally, these vehicles would not be operated at highway speeds as often as the average passenger car, making aerodynamic improvements unnecessary as a practical matter. Due to these factors, NHTSA has tentatively concluded that it would not have been economically practicable for LondonCoach to implement aerodynamic improvements to increase the fuel economy of its automobiles for MYs 1985 through 1987.

*Engine Improvements*

This agency has examined the question of whether LondonCoach could have improved the fuel economy of its 1985 through 1987 automobiles by using a different engine than the one currently used. The petitioner specifically chose to substitute the Ford Motor Co. 2.3 liter OHC, 4 cylinder in-line gasoline engine for the one that is installed in the vehicle manufactured and sold in the United Kingdom. The Ford engine is 350 pounds lighter and more efficient than the one used in the United Kingdom. It has been used in Ford vehicles. especially in the Ford LTD and Mustang, which have complied with EPA standards for the past 10 years. The engine selected has among the lowest horsepower offered by a manufacturer of vehicles intended for use as taxis or limousines.

Because of the low volume of production, it is impractical for London-Coach to consider producing its own engine. LondonCoach considered using the diesel engine Carbodies uses in the UK version of the automobile, but this engine does not meet U.S. emissions standards. The small engine compartment of the vehicle limits the selection of available U.S. certified diesel engines, and the manufacturer decided that there were no significant fuel economy advantages to justify offering a diesel, considering the relatively low cost of gasoline in the United States. Furthermore, all diesel passenger car engines of the appropriate size that were certified in MY 1985 were imported, potentially creating another

problem for a small company in development and production. Although the fuel economy could increase by using a diesel engine, the agency has determined that it would not have been economically feasible for LondonCoach to choose such engines due to the overall higher cost of diesel engines. LondonCoach does anticipate adopting the engine design improvements that Ford incorporates in its own cars which would result in improved fuel economy in future years.

A larger engine could improve fuel economy if it operated at more nearly optimum efficiencies on the EPA test cycle, but the extra weight would offset any such improvement. Further, the vehicle is intended to be used at low speeds in urban areas. Therefore, a larger, more powerful engine would not enhance fuel economy at these low speeds. After considering these factors, NHTSA has tentatively determined that it would not have been technologically feasible nor economically practicable for LondonCoach to improve its fuel economy by using an alternative engine.

*Drive Line Improvements*

The primary drive line improvements to enhance achievable fuel economy are transmission improvements and the use of a lower rear axle ratio. The transmission chosen is a Ford C–3 3-speed automatic transmission that is compatible with the Ford engine. Although an additional transmission gear or a lock up clutch on the torque converter could improve fuel economy, it would have been economically impractical for LondonCoach to match the engine with a different transmission. This would have required extensive redesign beyond the economic capabilities of a low volume manufacturer. Further, there would have been little fuel economy improvement in actual service from these changes for vehicles that are intended to be driven primarily at low speeds in urban traffic.

The overall drive ratio of LondonCoach vehicles, N/V, (engine rpm/vehicle speed in top gear) is 58.8 on air-conditioned models. Although this ratio is high, a lower value would have been impractical and would have penalized performance since the engine is so small in relation to the weight of the automobiles. NHTSA has determined that such changes to the overall drive ratio or to the transmission would have been economically impracticable for LondonCoach. Based on this analysis, the agency has tentatively determined that it would not have been technologically feasible or economically practicable for LondonCoach to improve its fuel economy by making drive line improvements.

*Mix Shifts*

The two versions of the LondonCoach vehicles are with different trim appointments. One is known as the London Taxi and the other is the London Sterling. Both have the same fuel efficiency of 21.0 mpg when equipped with air conditioning. The only configurations offered by LondonCoach with different fuel economies are those same vehicles without air conditioning. This means that LondonCoach offers four possible options: the London Taxi with air conditioning, the London Taxi without air conditioning, the London Sterling with air conditioning, and the London Sterling without air conditioning. The models without air conditioning attain a fuel economy of 22.4 mpg. Because there are basically only two configurations, i.e., a model with air conditioning and a model without air conditioning, there is little opportunity to affect fuel economy through mix shifts. Further, since the intended use of the vehicles is to carry fare-paying passengers, it is unlikely that there would have been any significant demand for the model without air conditioning. Therefore, the agency believes that it would not have been economically practicable for Londoncoach to have made any significant increase in fuel economy through mix shifts.

*Impacts of Other Federal Standards*

LondonCoach did not claim any negative impacts on its average fuel economy as a result of applicable Federal safety damageability, emission, or noise standards. In the absence of a specific showing of fuel economy penalty arising from those standards, NHTSA concludes that whatever fuel economy was lost as a result of compliance with Federal standards was built into the EPA's fuel economy test results. With respect to the LondonCoach petition, the NHTSA has tentatively assumed that there is no unaccounted-for negative impact on fuel economy caused by applicable Federal standards.

*The Need of the Nation to Conserve Energy*

The agency recognizes there is a need to conserve energy to promote energy security and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it would not have been technologically feasible or economically practicable for LondonCoach to achieve an average fuel economy above the level of 21.0 mpg in the 1985 through 1987 model years. Since LondonCoach was producing such a small number of vehicles and could not achieve higher average fuel economy than these levels in the 1985 through 1987 model years, granting it an exemption and setting alternative standards at those levels for those model years would not then have resulted and would not now result in any additional fuel consumption or have any effect on the need of the Nation to conserve energy.

*Proposed Alternative Standards*

This agency has tentatively concluded that it would not have been technologically feasible or economically practicable for LondonCoach to achieve a higher average fuel economy than 21.0 mpg in MYs 1985 through 1987, that compliance with other Federal automobile standards did not adversely affect achievable fuel economy, and that the national effort to conserve energy would not then have been and would not now be affected by granting the requested exemption and establishing an alternative standard. Consequently, this notice proposes to conclude that the maximum feasible average fuel economy for LondonCoach in MYs 1985 through 1987 is 21.0 mpg. Therefore, the agency proposes to exempt LondonCoach from the generally applicable standard of 27.5 mpg for MY 1985, and 26.0 mpg for MYs 1986 through 1987.

**Maserati**

*Background Information About Maserati*

Maserati's automobiles have traditionally been expensive high performance vehicles. According to its petition, Maserati's reputation is based on a combination of performance and luxury. The company experienced an extended period of financial instability in the late 1970's and early 1980's. In 1974, Citroen, then owner of Maserati, put Maserati into voluntary bankruptcy. This action resulted in Maserati totally ceasing all production for more than a year during 1975 and 1976. The company produced very few cars through MY 1981, and the models it did produce were simply continuations of its older models. However, a loan from the Italian government permitted Maserati to develop and introduce a new model, the Biturbo, in Europe in 1982. This new model helped return Maserati to profitability. In fact, Maserati had projected sales of 4,100 vehicles in the United States in MY 1985, up from sales of 52 vehicles in MY 1983. According to *Ward's Yearbook*, world wide

production of all Maserati models was 6180 in 1984 and 5668 in 1985.

Maserati produced two models during MYs 1982 through 1985. One of these models, the Quattroporte, was the first "new" vehicle produced by Maserati after the company was reorganized in bankruptcy. However, this vehicle was designed on very short notice, using as many components in Maserati's inventory as possible. The company's management determined that they needed to generate revenue quickly to reverse the significant operating losses Maserati had accumulated. The Quattroporte, according to Maserati's petition, "cannot play a leading role in the company s future."

The other model is the Biturbo, which is primarily responsible for the company's improved financial status. The Biturbo was introduced in Europe in 1982 and in the United States for MY 1984. It was a completely new design by Maserati that was not required to use components in the company's inventory. The Biturbo is much lighter and more aerodynamic than the Quattroporte. Further, the Biturbo is powered by a 152 cubic inch displacement (CID) V–6 engine with two turbochargers and 3 valves per cylinder, while the Quattroporte is powered by a 301 CID V–8 engine with only 2 valves per cylinder.

*Methodology Used to Determine Maserati's Maximum Feasible Average Fuel Economy for the 1984 and 1985 Model Years*

Throughout this analysis, NHTSA has considered only those improvements which would have been compatible with the basic design concepts of Maserati automobiles. Design changes that would have made the cars something other than high performance luxury vehicles or remove items traditionally offered on expensive, high-performance vehicles were not considered. Such changes to the basic design or performance might have significantly reduced the demand for these automobiles, thereby reducing sales and causing additional economic pressure on Maserati.

*Baseline Fuel Economy*

Table I shows the projected composition of Maserati's fleet and its EPA measured fuel economy for MYs 1984 and 1985:

TABLE I—COMPOSITION OF MASERATI'S U.S. FLEET

| Model year | Model | Transmission type | Sales | Combined fuel economy (mpg) | CAFE (mpg) |
|---|---|---|---|---|---|
| 1984 | Quattroporte | A3L | 182 | 10.0 | |
| | Biturbo | M5 | 1,884 | 18.7 | [1] 17.3<br>[2] 17.9 |
| 1985 | Quattroporte | A3L | 143 | 10.0 | |
| Biturbo | M5 | 505 | 18.7 | | |
| | Biturbo (no-light-off catalyst) | M5 | 675 | 17.7 | |
| | Biturbo | A3 | 678 | 15.7 | [1] 16.6<br>[2] 16.8 |

[1] Unadjusted CAFE for actual sales.
[2] Actual EPA adjusted figure.

Maserati expected its sales to more than double between MYs 1984 and 1985. The sales in both years are substantial when compared with MY 1983, when Maserati sold only 52 cars in the United States. The configurations of the Biturbo model increased from one for MY 1984 to three in MY 1985. The one Biturbo configuration available in 1984 was carried forward unchanged to 1985. This was planned as the Biturbo configuration that would be certified as complying with the California emissions standards in the 1985 model year. The "no-light-off catalyst" configuration of the Biturbo eliminated the catalysts near the exhaust manifold. Maserati did this to reduce its costs for the Biturbo, by saving the cost of the additional catalyst. Maserati's original intention was to offer this less costly, single catalyst version of the Biturbo as the 49-State version, and continue to offer the Biturbo with the additional "light-off" catalyst as the California version. However, when Maserati finished its compliance testing for the no-light-off catalyst version of the Biturbo, it learned that this version also complied with the California emissions standards. Thus, both versions of the Biturbo were offered as 50-State models in the 1985 model year. Finally, Maserati introduced a configuration of the Biturbo with a 3-speed automatic transmission for MY 1985. This change allowed Biturbo purchasers to order the car with an automatic transmission

For the purposes of this proposed determination of Maserati's maximum feasible average fuel economy, 17.9 mpg was used as the baseline for MY 1984 and 16.8 mpg was used as the baseline for MY 1985. Any changes found technologically feasible and economically practicable were added to these levels to arrive at these proposed determinations of Maserati's maximum feasible average fuel economy for MYs 1984 and 1985.

*Weight Reduction*

In analyzing this area, there are significant differences between the two Maserati models. The older Quattroporte has a curb weight of 4,740 pounds. This is heavy even when compared with other high performance vehicles. However, the newer Biturbo model has a curb weight of 2,600 pounds, which is at the lower end of the weight range for high performance vehicles. For example, the Biturbo weighed less during MYs 1984 and 1985 than the Chevrolet Corvette and the Nissan 300 ZX.

The agency has examined two means by which Maserati could have reduced the weight of its MY 1984/85 vehicles. The first is downsizing, which requires a complete redesign of a vehicle. In the case of the Quattroporte, Maserati stated in its petition that this model could not play a leading role in the company's future. Instead, the company chose to concentrate its financial and engineering efforts to improving fuel economy on the newer Biturbo model. Recognizing the limited capital and engineering resources available to Maserati, NHTSA has tentatively

determined that it would not have been economically practicable for Maserati to downsize its Quattroporte model in the affected model years.

With respect to the Biturbo, Maserati introduced that model in the United States in MY 1984. Its fuel economy was 77 percent higher than the Quattroporte, and it was a lightweight high performance sedan. Since Maserati had just made the necessary investments to introduce this model in MY 1984, NHTSA tentatively determines that it would have been neither economically practicable nor technologically feasible for Maserati to have downsized the Biturbo for MYs 1984 and 1985.

The other means examined for achieving weight reduction was materials substitution. In the case of the Quattroporte, Maserati did not attempt to use materials substitution to reduce its weight. While weight reduction for this model would have been technologically feasible had Maserati made use of materials substitution, such a capital investment appears to have been beyond the financial capabilities of Maserati for MYs 1984 and 1985. This is particularly true in view of the company's large investment in its new Biturbo model. Therefore, NHTSA has tentatively determined that it would not have been economically practicable for Maserati to have used materials substitution to reduce the weight of its Quattroporte during MYs 1984 and 1985.

Maserati seems to have been very conscious of vehicle weight when designing the Biturbo. As noted above, the Biturbo has a curb weight of 2600 pounds, which is lower than the curb weight of high-performance vehicles produced by Nissan and General Motors. NHTSA has tentatively concluded that it would not have been technologically feasible for Maserati to have further reduced the weight of its Biturbo by means of materials substitution. Accordingly, NHTSA tentatively determines that it would not have been technologically feasible or economically practicable for Maserati to have improved the average fuel economy of its 1984/85 vehicles by means of weight reduction.

*Aerodynamic Improvements*

The Quattroporte has a relatively large frontal area. Aerodynamic improvements would have probably increased the fuel economy of this model during the affected model years. However, aerodynamic improvements to this model, whether achieved by redesigning the body or using add-on devices, would have required considerable development and testing. Since Maserati was devoting its limited resources to developing and introducing its Biturbo model, NHTSA has tentatively determined that it would not have been economically practicable for Maserati to have improved the fuel economy of the Quattroporte by means of aerodynamic improvements.

The Biturbo model has a frontal area more than 10 percent less than the Quattroporte. Since it was a new model for MY 1984, further reductions of the frontal area or aerodynamic improvements would not be practical until a major redesign is done for a future model year. The Biturbo was designed under severe financial constraints, precluding the extensive development required to optimize aerodynamics. NHTSA tentatively determines that it would not have been technologically feasible or economically practicable for Maserati to have improved the fuel economy of its Biturbo by means of aerodynamic improvements.

*Engine Improvements*

The Quattroporte was equipped with a 301 CID V–8 engine during the affected model years. As noted above, this engine was carried over from past model years. Maserati achieved some fuel economy gains from the engine by using a leaner carburetion mix. However, the most significant fuel economy gains would have been achieved by reducing the size of the engine, or redesigning it to accommodate more advanced technology. Any such course of action would have required Maserati to have diverted its resources from designing and introducing the Biturbo model. NHTSA has tentatively determined that such a diversion of resources to improve the engine of the Quattroporte would not have been economically practicable for Maserati for the affected model years.

The Biturbo was equipped with a 152 CID V–6 engine during the affected model years. To increase the thermal efficiency and maintain a high level of performance, the engine includes two turbochargers. A third valve was also added to each cylinder to promote complete combustion of the fuel mixture. All Maserati models meet 50-state emissions standards. The 1985 Biturbo "no-light-off catalyst" model was intended to be a 49-state certification model. It turned out, however, that despite the elimination of the catalysts near the exhaust manifold, this model also met California emissions standards. If Maserati had included the "light off catalyst" on all 1985 models, its CAFE would be somewhat higher. For the reasons stated below in the discussion of drive line improvements, this was not an economically practicable alternative. NHTSA has therefore tentatively determined that it would not have been technologically feasible and economically practicable to have improved the fuel economy of the Biturbo by means of engine improvements.

*Drive Line Improvements*

The primary drive line improvements to enhance achievable fuel economy are transmission improvements and the use of a lower rear axle ratio. The Quattroporte used a 3-speed automatic transmission with a lockup torque converter made by Chrysler in both affected model years. A 5-speed manual transmission would probably increase fuel economy for the Quattroporte. However, the vehicle is marketed as a high-performance luxury car. These types of cars are traditionally equipped with automatic transmissions. If the Quattroporte were offered only with a manual transmission, it could loss potential customers who would demand an automatic transmission. Given this risk and Maserati's need to generate revenue in the wake of its then recent financial difficulties. NHTSA has tentatively determined that it would not have been economically practicable for Maserati to have used manual transmissions on its Quattroporte during the affected model years.

A 4-speed automatic transmission with a lockup torque converter would have also probably improved the fuel economy achieved by the Quattroporte. However, it is not clear that any available 4-speed automatic transmission with a lockup torque converter would have had adequate capacity for the horsepower rating (288) of the Maserati 301 CID engine. General Motors offers a 4-speed automatic transmission with a lockup torque converter on the Corvette, but that engine has a horsepower rating of 230. Even if it were technologically feasible to equip the Quattroporte engine with a 4-speed automatic transmission, it would have required substantial development and certification costs for Maserati. These costs would have diverted Maserati's resources from the development of its Biturbo. After considering this, NHTSA has tentatively determined that it would not have been technologically feasible and economically practicable for Maserati to have used a 4-speed automatic transmission with a lockup torque converter on the Quattroporte for the affected model years.

The majority of the Biturbo models are sold with a manual five-speed transmission with overdrive, which is a very efficient transmission. For 1984, the Biturbo was offered only with a 5-speed manual transmission, so NHTSA tentatively determines that no transmission improvements were technologically feasible for the Biturbo during the 1984 model year. For 1985, the Biturbo was offered with a 5-speed manual transmission and a 3-speed automatic transmission without a lockup torque converter. A small part of the MY 1985 production used a Zahnradfabrik Friedrichshafen (ZF) three-speed automatic transmission. Maserati investigated other available automatic transmissions, but none existed with adequate torque capacity for the Biturbo engine and that would fit the packaging constraints of this small car. A major redesign of the body structure to accommodate a more efficient automatic transmission would have been expensive and would have delayed the introduction of the automatic transmission in the U.S. market, where it was an important option.

Until recently, Maserati was operating at a very low level of production. The second catalyst was removed from some of the 1985 Biturbos, with the intention of reducing production costs for the 49 State vehicles and improving performance without reducing demand for those vehicles. This was an action taken to reduce production costs and improve its sales potential as a high performance car. While this action did lower the fuel economy of these vehicles, the concept of economic practicability is broad enough to recognize the severe recent financial crises experienced by Maserati when determining the maximum feasible average fuel economy for that company. After considering Maserati's critical need to earn profits in light of its recent financial difficulties, NHTSA has tentatively determined that it would not have been economically practicable for Maserati to have increased its 1985 fuel economy by installing two catalysts on all manual transmission versions of its Biturbo model.

The overall drive ratios on both Maserati models during the affected model years were fairly high, but very similar to those of other high performance vehicles, both domestic and imported. While fuel economy could have been increased by reducing these drive ratios, the performance of the vehicles would have been reduced as a result of these reductions. Such reductions would very likely have reduced the demand for Maserati vehicles. NHTSA has previously stated that it does not consider such changes to be economically practicable, especially given the then recent difficulties of Maserati. Accordingly, NHTSA has tentatively determined that it would not have been technologically feasible and economically practicable for Maserati to have improved its 1984 and 1985 fuel economy by means of drive line improvements.

*Mix Shifts*

In Maserati's case, this would primarily involve shifting purchasers from its Quattroporte to its Biturbo model. More than 90 percent of Maserati's sales in MY 1984 were Biturbos, and more than 92 percent of its sales in MY 1985 were Biturbos. Further mix shifts to reduce the sales of Quattroportes were not feasible because of the already dominant position of the Biturbo. Therefore, NHTSA has tentatively determined that it would not have been technologically feasible and economically practicable for Maserati to have improved its 1984 and 1985 fuel economy through mix shifts.

*Impacts of Other Federal Standards*

Compliance with emissions standards has made fuel economy improvements difficult for Maserati. As a low volume, financially-troubled manufacturer, Maserati has been slow to develop and introduce technology that would permit better optimization of emissions and fuel economy. However, Maserati did not claim any negative impacts on its average fuel economy as a result of applicable Federal safety, damageability, emission, or noise standards. In the absence of a specific showing of fuel economy penalty arising from those standards, NHTSA will assume that whatever fuel economy was lost as a result of compliance with Federal standards was built into the EPA's fuel economy test results. With respect to the Maserati petition, NHTSA has tentatively assumed that there is no unaccounted-for negative impact on fuel economy caused by applicable Federal standards.

*The Need of the Nation to Conserve Energy*

The agency recognizes there is a need to conserve energy to promote energy security and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it was not technologically feasible or economically practicable for Maserati to attain an average fuel economy above the level of 17.9 mpg for MY 1984 and 16.8 mpg for MY 1985. Since Maserati was producing such a small number of vehicles and could not achieve higher average fuel economy than these levels in the 1984 and 1985 model years, granting Maserati an exemption and setting alternative standards at those levels for those model years would not then have resulted and would not now result in any additional fuel consumption or in any effect on the need of the Nation to conserve energy.

*Proposed Alternative Standards*

This agency has tentatively concluded that it would not have been technologically feasible or economically practicable for Maserati to achieve a higher average fuel economy than 17.9 mpg for MY 1984 and 16.8 mpg for MY 1985, that compliance with other Federal automobile standards did not adversely affect achievable fuel economy, and that the national effort to conserve energy would not then have been and would not now be affected by granting the requested exemption and establishing an alternative standard. Consequently, this notice proposes to conclude that the maximum feasible average fuel economy for Maserati is 17.9 mpg for MY 1984 and 16.8 mpg for MY 1985. Therefore, the agency proposes to exempt Maserati from the generally applicable standard of 27.0 mg for MY 1984, and 27.5 mpg for MY 1985.

NHTSA has analyzed this proposal and determined that neither Executive Order 12291 nor the Department of Transportation regulatory policies and procedures apply, because the proposal would not establish a "rule," which term is defined as "an agency statement of general applicability and future effect." The exemptions are not generally applicable, since they apply only to the manufacturers discussed in this notice. If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted companies would not be required to pay civil penalties for achieving what the agency has tentatively determined to be their maximum feasible average fuel economy for the models years in question. Since this proposal sets an alternative standard at the level determined to be each company's maximum feasible level, no fuel would have been or would now be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

In accordance with 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, I certify that this proposed rule would not, if promulgated, have a "significant

economic impact on a substantial number of small entities." The rationale for this certification is that this proposal applies specifically to three low volume manufacturers and not to industry in general.

The agency has also considered the environmental implications of this proposal in accordance with the National Environmental Policy Act. As an initial matter, this is not a "major Federal action." Moreover, this proposal, if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they were required to meet the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemptions and alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel available.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. If applicable, it is requested that two copies of films, tapes, and other similar materials be provided.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**List of Subjects in 49 CFR Part 531**

Energy conservation, gasoline, imports, motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 531 be amended to read as follows:

**PART 531—[AMENDED]**

1. The authority citation for part 531 would continue to read as follows:

Authority: 15 U.S.C. 2002, delegation of authority at 49 CFR 1.50.

2. Sections 531.5 would be amended by revising paragraphs (b)(7) and adding paragraphs (b)(8) and (b)(9) to read as follows:

**§ 531.5 Fuel economy standards.**

* * * * *

(b) * * *

(7) *Maserati.*

| Model year | Average fuel economy standard (miles per gallon) |
|---|---|
| 1984 | 17.9 |
| 1985 | 16.8 |

(8) *Lamborghini.*

| Model year | Average fuel economy standard (miles per gallon) |
|---|---|
| 1983 | 13.7 |
| 1984 | 13.7 |

(9) *LondonCoach.*

| Model year | Average fuel economy standard (miles per gallon) |
|---|---|
| 1985 | 21.0 |
| 1986 | 21.0 |
| 1987 | 21.0 |

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Issued on September 26, 1989.

Barry Felrice,

*Associate Administrator for Rulemaking.*

[FR Doc. 89-23089 Filed 10-2-89; 8:45am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 222

RIN 0648-AB47

[Docket No. 80106-9148]

### Endangered Fish or Wildlife; Permits for the Incidental Taking of Endangered Marine Species

**AGENCY:** National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** Revisions are proposed to 50 CFR part 222 to establish procedures for issuing permits under section 10 of the Endangered Species Act (ESA) for the incidental taking of endangered marine species that are under the jurisdiction of the Secretary of Commerce. These permits are authorized by the 1982 amendments to the ESA. The proposed regulations would allow permits to be issued for a take of endangered marine species incidentally to an otherwise lawful activity, provided certain conditions are met.

**DATE:** Comments on this proposed rule must be received by December 4, 1989.

**ADDRESS:** Send comments to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Patricia Montanio or Margaret Lorenz, Office of Protected Resources, 301-427-2322.

**SUPPLEMENTARY INFORMATION:**

**Background**

The 1982 amendments to the ESA revised section 10(a) to allow the Secretaries of Commerce and the Interior greater flexibility in regulating the incidental taking of endangered